

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 3645 – HB 3949

March 30, 2010

**SUMMARY OF AMENDMENTS (015691, 016170):** Deletes all language following the enacting clause. Removes the current state action doctrine exemption from federal and state antitrust law for any private act metropolitan hospital authority that has 55 percent or more of the total hospital discharges within its county. The antitrust law exemption would remain in place for private act metropolitan hospitals in counties in which the private act metropolitan hospital is the only hospital provider. Prohibits a private act metropolitan hospital authority covered by the act and that makes payments to local governments pursuant to a formula from paying less than the amount paid to local governments in 2009.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – Not Significant

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

**Local Revenue – Net Impact – Not Significant**

**Local Expenditures – Net Impact – Not Significant**

Assumptions applied to amendments:

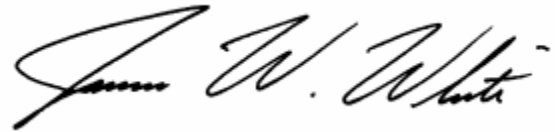
- In *Jackson, Tennessee Hospital Company LLC v. West Tennessee Healthcare, Inc.*, 414 F3d608 (6<sup>th</sup> Cir.2005), the U.S. Sixth Circuit Court of Appeals held that private act metropolitan hospitals are immune from federal and state antitrust liability under the state action doctrine. The state action doctrine exempts subdivisions of state government from antitrust liability when there is a clear state policy authorizing anticompetitive acts. *Id.* At 609. The case involved the Jackson-Madison County General Hospital District. *Id.*
- This bill would partially reverse the holding in this case by stating that state policy does not authorize anticompetitive acts by private metropolitan act hospital authorities in counties in which the hospital operated by the authority has 55 percent of the hospital discharges in the county. The exemption would remain for hospitals operated by these authorities in counties in which the authority's hospital is the only hospital provider.
- Anticompetitive acts by private act metropolitan hospitals are undertaken for the purpose of maximizing hospital utilization and revenue generated for the hospital. These acts are also undertaken to minimize the cost of the hospital's provider agreements. Preventing

these acts will decrease revenue generated by the hospital and will increase expenditures due to the higher cost of provider agreements.

- Currently, the Jackson-Madison County General Hospital makes annual payments to the City of Jackson and Madison County based on a formula adopted by the hospital in 1996. In 2008 and 2009, the hospital made the minimum payment of \$200,000 to both the city and the county. The provisions of the bill will require the hospital to continue making this minimum payment.
- Neither the City of Jackson nor Madison County make any payments to the hospital.
- There will not be a significant impact to the local revenue or local expenditures of the City of Jackson or Madison County.
- No direct cost impact on the TennCare program.

### **CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

/kml